

Legislation to Expand Physician Assistants Scope of Practice Has Hearings; Proponent Testimony from ED Physician

Representatives Anne Gonzales (R – Westerville) and Tom Letson (D – Warren) have introduced legislation that would expand the scope of practice for physician assistants in Ohio. House Bill 284 includes the following provision:

1. Includes PAs in the medical home model.
2. Allows PAs to determine death in certain settings and circumstances. However, the PA would not be permitted to complete any portion of the death certificate and must notify the person’s attending physicians of the death within a reasonable period of time.
3. Includes PA in the DNR sections of law and extends immunity to them.
4. Allows a PA to remove birth control devices.
5. Allows a PA to insert or remove chest tubes.
6. Allows a PA to prescribe PT and order OT.
7. Expand PA prescriptive authority to include schedule II controlled substances. The PA would be prohibited from personally furnishing the schedule II drugs.
8. Allows a PA to authorize EMS/first responder treatments.
9. Requires Medicaid to reimburse a PA at 100% of the Medicaid fee schedule.

HB 284 has been referred to the House Health and Aging Committee. There have been three hearings on the bill. At the third hearing on November 16, 2011, written proponent testimony was submitted by Dr. James Sudimack. Dr. Sudimack is an emergency physicians currently practicing with Team Health in Cleveland. Sudimack stated in his testimony that HB 284 would allow him to utilize PAs more and could decrease wait times for patients. No witnesses have provided opponent testimony.

Legislation Would Allow Paramedics to Administer Vaccines

House Bill 244 has been introduced by Representatives Anne Gonzales (R – Westerville) and Kristina Roegner (R – Hudson). HB 244 would permit the medical director or cooperating physician advisory board of each emergency medical service organization to authorize one or more emergency medical technicians-paramedic within the organization to administer immunizations for influenza to either of the following:

1. A full-time paid firefighter, part-time paid firefighter, or volunteer firefighter;
2. An emergency medical technician-basic, emergency medical technician-intermediate, or paramedic.

EMS organizations would be required to establish written protocols and training that a paramedic must follow when administering the immunization.

The legislation is being considered in the House Health and Aging Committee. The bill has been given three hearings. At the second hearing on September 21, 2011, Dr. David Keseg gave proponent testimony. Dr. Keseg stated that HB 244 “will help protect the public from being exposed to the flu through emergency responders; help keep the emergency medical services (EMS) workforce in service during influenza season; and will save money from municipal budgets from work-related expenses from the flu.”

The bill was amended at the third hearing on November 16, 2011 to require reporting to local boards of health or the state immunization registry of immunizations administered by paramedics.

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Ohio Senate Re-Works Committee Structure – Combines Criminal and Civil Justice Committees

The Ohio Senate has reorganized their committee structure and composition this fall in response to the high number of new members in the Senate Republican Caucus. The biggest change was the decision to combine the Senate Civil Justice Committee and the Senate Criminal Justice Committee. The new Senate Judiciary Committee is composed of the following members:

Senator Mark Wagoner (R – Toledo), Chair
Senator Larry Obhof (R – Montville Township), Vice Chair
Senator John Ecklund (R - Munson Township)
Senator Keith Faber (R – Celina)
Senator Frank LaRose (R – Copley)
Senator Scott Oelslager (R – Canton)
Senator Bill Seitz (R – Cincinnati)

Senator Eric Kearney (D – Cincinnati), Ranking Minority Member
Senator Michael Skindell (D – Lakewood)
Senator Nina Turner (D – Cleveland)

Senate Bill 129, Ohio ACEP’s Access to Care Legislation is now being considered by the Senate Judiciary Committee.

Ohio ACEP’s “Access to Care” Legislation Stalls in Senate Committee

Senators Kevin Bacon (R – Minerva Park) and Cliff Hite (R – Findlay) introduced Senate Bill 129 which is the re-introduction of last General Assembly’s Senate Bill 86. The legislation would grant qualified civil immunity, using the reckless disregard standard, to a physician who provides emergency medical services, first-aid treatment, or other emergency professional care in compliance with the federal Emergency Medical Treatment and Active Labor Act (EMTALA). The legislation also grants qualified civil immunity, using the willful and wonton standard from emergency medical services needed as a result of a disaster.

The following Senate members have signed on as co-sponsors of the legislation:

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| <input type="checkbox"/> Senator Karen Gillmor (R – Tiffin) (<i>resigned</i>) | <input type="checkbox"/> Senator Tim Schaffer (R – Lancaster) |
| <input type="checkbox"/> Senator Kris Jordan (R – Powell) | <input type="checkbox"/> Senator Jimmy Stewart (R – Albany) (<i>resigned</i>) |
| <input type="checkbox"/> Senator Peggy Lehner (R – Kettering) | <input type="checkbox"/> Senator Chris Widener (R – Springfield) |
| <input type="checkbox"/> Senator Larry Obhof (R – Montville Township) | |

SB 129 was referred to the Senate Judiciary Committee on Civil Justice. Senators Bacon and Hite gave sponsor testimony on March 30, 2011.

On April 13, 2011 the legislation was given a proponent hearing. Testifying on the legislation was:

- Dr. Gary Katz, Ohio ACEP President;
- Michael Frank, JD, MD;
- Dr. Mark Dean, representing the OSMA; and
- John Gilchrist, representing the Ohio State Association of Nurse Anesthetists

Also in attendance were members of the Ohio ACEP Board of Directors and members of the 2011 Leadership Development Class. The hearing was held in conjunction with Ohio ACEP Leadership Development and Advocacy Day held in Columbus.

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The committee had many questions for the Dr. Katz and Dr. Frank. The questions focused on the scope of EMTALA: when does the “emergency” end? Who is covered under the EMTALA mandate in the emergency departments? What is the hospital responsibility vs. the physician responsibility? The witnesses did a great job explaining the EMTALA mandate that emergency physicians must work under. They also did a good job of keeping the focus of their argument on increasing access to emergency care to Ohioans.

A third hearing was held on May 4, 2011. Testimony was given in opposition to the legislation by:

- Gerald Leeseberg, Past President of the Franklin County Trial Lawyers Association;
- Michael Shroge, attorney;
- Dr. Samuel Kiehl, OSU Medical Center, Ohio ACEP member and former Ohio ACEP Board member; and
- Paul Grieco, a Cleveland attorney who delivered testimony prepared by Ohio Association for Justice President Dennis Mulvihill, who was unable to attend at the last minute.

In his testimony Kiehl said: *“it is my opinion that the proposed legislation will have an unfair negative impact on patients and give emergency physicians the right to provide poor care to patients without accountability to patients for harm they have caused them.”* Dr. Kiehl did testify that there is indeed a shortage of specialists providing on-call service, there is a shortage of board certified ED physicians, and that EMTALA does have a unique impact on the practice environment for emergency medicine. However, he stated that SB 129 would not help solve these problems.

The opponents and the committee also focused on the “affidavit of merit” requirement already in statute. This requires a physician to review the evidence of a claim and certify that the claim has “merit” to go forward.

Medical Board Proposes Rules to Implement Expedited Partner Therapy

The State Medical Board has proposed new rule 4731-11-12 regarding “Expedited Partner Therapy”. The rule would allow a physician to provide “prescription antibiotics to one or more sex partners of a patient who has been personally examined and diagnosed with a sexually transmitted infection, without the physician having personally examined and diagnosed the partner(s).” The rule was promoted by the Department of Health and the CDC as a benefit to public health. Most other states have something on the books to allow for expedited partner therapy, with Ohio being one of 7 that do not.

Ohio ACEP discussed the issue and were generally supportive of the rule and recognized the public health benefits of the practice. Members were also supporting of the rule being permissive and not a requirement. However, members thought the permissive language should be clearer.

A letter was submitted the State Medical Board on November 16, 2011. The following language was suggested: *“Whether or not to provide expedited partner therapy shall be at the sole discretion of the physician, and nothing herein shall be construed to create an obligation on the part of a physician to provide expedited partner therapy.”* Members also raised liability concerns for providing a prescription for a patient they have not personally seen. Those concerns were also address in the official comment letter.

A public hearing was held on the rule on November 18, 2011. It is scheduled to come before JCARR on December 19, 2011. A copy of Ohio ACEP’s letter has also been submitted to JCARR.

Bills Aim to Increase Penalty for Assaulting a Healthcare Worker; HB 62 Seems To Be Vehicle

House Bill 62, sponsored by Representative Anne Gonzalez (R – Westerville), was introduced to increase the penalty for assault of a nurse. However, at the fourth hearing on the legislation before the House Criminal Justice Committee, the bill was amended to include all healthcare professionals, healthcare workers, and security officers of a hospital. HB 62 was reported out committee on May 18, 2011. The House of Representatives passed the legislation on June 1, 2011 by a vote of 83-12.

The legislation is now being considered in the Senate Judiciary Committee. The bill has had two hearings. The committee has heard from several proponents of the legislation. Testifying in opposition to HB 62 was John Murphy, Executive Director of the Ohio Prosecuting Attorneys Association, stating that his members thought the current assault penalties were adequate. Some members of the Senate committee have expressed similar concerns about treating healthcare workers different from other citizens. There have also been concerns that the legislation could increase cost to the judicial system.

House Bill 154 has been introduced by Representatives Stephan Slesnick (D – Canton) and Denise Driehaus (D – Cincinnati). HB 154 would increase the penalty to a felony of the fourth degree if the victim of an assault is a healthcare professional, healthcare worker, or security officer of a hospital who is engaged in the performance of the individual's duties. HB 154 is being considered by the House Criminal Justice Committee. A sponsor hearing was held on March 30, 2011.

Senator Scott Oelslager (R – Canton) introduced legislation in the Ohio Senate. SB 111 has been referred to the Senate Judiciary Committee on Criminal Justice. A sponsor hearing was held on April 12, 2011 and a proponent hearing was held on May 10, 2011. 7 witnesses testified at the May 10th hearing. Many focused on the particularly unpredictable emergency department, where many of these assaults take place.

This legislation was introduced in the previous General Assembly as well. Ohio ACEP was approached by the Ohio Emergency Nurses Association to support the legislation. Ohio ACEP submitted letters of support to members of both the House and Senate Committees stating:

“In the unique environment of the ER, often patients may be violent for a variety of reasons, including the influence of drugs, alcohol, or mental illness, or criminal intent. Emergency physicians typically do not have access to medical and psychiatric history prior to providing patient care. Ohio ACEP believes that optimal patient care can be achieved only when patients, health care workers, and all other persons in the emergency department are protected against violent acts. According to a Bureau of Labor Statistics analysis almost 60% of assaults in the workplace occurred in a health care setting. Nearly three-quarters of these assaults were by patients or residents of a health facility.”

Bills to Expand Nurses Prescriptive Authority Passes the Senate; Begins House Hearings

For the third session, this time in the Senate, Scott Oelslager (R – North Canton) has introduced Senate Bill 83. SB 83 would allow advanced practice nurses (APN) to prescribe schedule II controlled substances. The bill also modifies the course of study required to become an APN including expanding instruction that is specific to schedule II controlled substances. Senator Oelslager is sponsoring this bill with Senator Charleta Tavares (D – Columbus)

SB 83 was considered by the Senate Health, Human Services and Aging Committee. There were seven hearings on the legislation. At the hearings on June 15, 2011 and June 22, 2011 amendments were accepted and at the June 22nd hearing the committee favorably reported out the bill. The Ohio Senate passed the legislation on June 28, 2011 by a vote of 32-1. Senator Kris Jordan was the lone “no” vote.

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The legislation is now being considered by the House Health and Aging Committee. There have been two hearings on the bill to date. At the second hearing on September 21, 2011, Kelly Vyzral with the Ohio Pharmacists Association, testified as an interested party and expressed concerns with restrictions on locations where APNs would be permitted to prescribe Schedule II drugs. Vyzral stated the pharmacist filing the prescription would have no way of knowing where the prescription was written from and by filing it they could be opening themselves up to legal challenges.

The bill as amended and passed by the Senate does the following:

Except as otherwise provided below, a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner (APNs) may prescribe to a patient a schedule II controlled substance only if all of the following are the case:

- The patient has a terminal condition,
- The collaborating physician of the APN initially prescribed the substance for the patient, and
- The prescription is for an amount that does not exceed the amount necessary for the patient's use in a single, twenty-four hour period.

The restrictions on prescriptive authority above do not apply if the APN issues the prescription to the patient from any of the following locations:

- A hospital registered under section 3701.07 of the Revised Code;
- A health care facility operated by the Department of Mental Health or the Department of Developmental Disabilities;
- A nursing home;
- A county home or district home;
- A hospice care program;
- A community mental health facility;
- An ambulatory surgical facility;
- A freestanding birthing center;
- A federally qualified health center;
- A health care office or facility operated by the board of health of a city or general health district or the authority having the duties of a board of health under section 3709.05 of the Revised Code.

An APN is specifically not allowed to issue a prescription for a schedule II controlled substance from a convenience care clinic.

A companion bill was introduced in the House. House Bill 141 is sponsored by Representatives Bruce Goodwin (R – Defiance) and Barbara Boyd (D – Cleveland). HB 141 has had three hearings in the House Health and Aging Committee.

Legislators Resign and Appointed

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The following are the legislators who have resigned recently and the individuals appointed to their respective seats:

<u>Resigned</u>	<u>New Position</u>	<u>Replacement Appointed</u>
Senator Gary Cates	Board of Regents, Vice Chan	Representative Bill Coley (R – West Chester)
Representative Bill Coley	Ohio Senate	Representative Margaret Conditt (R – Liberty Township)
Representative Bob Mecklenborg	Resigned due to DUI	Representative Louis Terhar (R – Cincinnati)
Senator Karen Gillmor	Industrial Commission	Representative David Burke (R – Marysville)
Representative David Burke	Ohio Senate	Representative Dorothy Liggett Pelanda (R-Marysville)
Senator Jimmy Stewart	Ohio Gas Association	Representative Troy Balderson (R – Zanesville)
Representative Troy Balderson	Ohio Senate	Representative Brian Hill (R – Zanesville)
Senator Tim Grendell	Geauga Co. Common Pleas Court	Senator John Eklund (R – Chardon)
Representative Todd McKenney	Appointed to a Judgeship	Yet to be Named
Representative John Carey	VP Gov't Affairs Shawnee State	Yet to be Named
Senator Jason Wilson	Gov's Office of Appalachia	Senator Lou Gentile
Representative Lou Gentile	Senate	Yet to be Named

Two More Legislators to Leave Before January, 2012

Representative Richard Hollington (R – Huntington Valley) ran unopposed for Mayor of Huntington Valley. Hollington who was appointed to serve in the Ohio House seat won by then Senator Tim Grendell in 2010, who then subsequently decided to remain in the Ohio Senate. Hollington will vacate the 98th District House seat to serve as Mayor.

Representative Tim DeGeeter (D – Parma) ran unopposed for Mayor of Parma. DeGeeter has served nearly 5 terms in the Ohio House (including an appointed term). He would have been term-limited in 2012 and not eligible to run for another term. DeGeeter will vacate the 15th House District to serve as Mayor.

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